



January 27, 2000

Ms. Ruth H. Soucy
Manager, Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-0282

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132043.

The Comptroller of Public Accounts (the "comptroller") received a request for all state taxes currently owed by a taxpayer, a list of audit periods currently in hearings, and a summary of current actions being taken to collect the delinquent taxes. You claim that portions of the submitted documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 111.006 of the Tax Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 111.006 of the Tax Code makes certain information related to tax examinations confidential. Section 111.006 provides:

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted by this section:

...

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers,

or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

In interpreting section 111.006, the Texas Supreme Court held that “the amounts of assessed deficiencies, refunds or credits are derived from tax-payer furnished information, and thus are confidential,” but that the comptroller must “disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund.” *A & T Consultants, Inc. v. Sharp*, 904 S.W. 2d 668, 680-81 (Tex. 1995). Therefore, we conclude that the dollar amounts marked by you are excepted from disclosure by section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. Thus, you must withhold the marked information.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839.

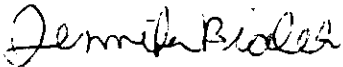
¹We note that you express concern about releasing the redacted documents because the requestor has already obtained confidential information about the tax deficiency amounts. However, only the deficiency amounts are protected under section 111.006 and the remaining information must be released regardless of whether the requestor will be able to confirm the confidential information.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 132043

Encl. Marked documents

cc: Ms. Allie Johnson
The Monitor Editorial Department
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(w/o enclosures)